IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2874 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT WATER SUPPLY & SEWERAGE BOARD

Versus

RAGHAVJI JAKHAR AHIR

Appearance:

1. Special Civil Application No. 2874 of 2003

MR MEHUL H RATHOD for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/04/2003

ORAL JUDGEMENT

Heard learned advocate Mr.Mehul Rathod appearing on behalf of the petitioner.

#. In the present petition, the petitioner has challenged the award passed by the Labour Court, Gandhidham, Kachchh in Reference No.638 / 1996 [Old No.207 / 1994] dated 13th November, 2002 wherein the labour court has set aside the order of termination and granted reinstatement with continuity of service and also granted 25 % backwages of the interim period. Learned advocate Mr.Mehul Rathod for the petitioner has submitted that it was not disputed between the parties that the respondent workman was employed in May, 1992 and remained in service upto August, 1993. That he was working as daily wager labourer - Valveman. Learned advocate Mr.Rathod has also submitted that the workman has left the work at his own on 10-th August, 1993 as per the report of the Supervisor which is at page-21 and the same was produced before the labour court. He also submitted that after the workmen has left the job and the petitioner has not terminated his services even though the workman had filed the complaint before the conciliation officer in May, 1994. He also submitted that he was appointed in project work especially the water supply project having an average life of 15-20 years. He also vehemently submitted that in respect of the petitioner, there was specific evidence by the witness that services of the workman were not terminated. Similarly, specific averments made in the reply contending that the service was not terminated, even though the labour court has come to the conclusion that the petitioner has failed to establish the fact that the service of the workman has not been terminated by the petitioner. However, he submits that the labour court has not given any reason in support of the conclusion. However, in respect of violation of Section 25-F of the I.D.Act, 1947 as the workman has completed 240 days service, no submission has been made by the learned advocate Mr.Rathod because the working days are not in dispute because of the fact that the petitioner has produced relevant presence register of the workman vide Exh.21 and from that record itself, it is proved and established before the labour court that the workman had completed 240 days continues service. It is also not disputed by the petitioner that at the time of termination, Section 25-F has not been complied with the mandatory provisions. However, learned advocate Mr.Rathod submitted that the labour court has passed the award without reason without application of mind and thereby, committed gross error and therefore, interference of this Court is required in the facts and circumstances of the case. Except this, no other submission is made by the learned advocate Mr.Mehul Rathod.

#. I have considered submissions of the learned advcoate Mr.Mehul Rathod on behalf of the petitioner. Perusal of the award impugned in this petition reflects that the workman was engaged as daily wager with effect from May, 1992 upto August, 1993 and on date 10th August, 1993, according to the petitioner the workman left the job and thereafter on 28th January, 1994 a complaint was filed by the workman. Therefore, the bone of contention surrounds on the issue that whether the workman has left the job at his own or the petitioner has terminated the services of the respondent workman. This aspect has been examined by the labour court in light of the written statement, oral evidence of the petitioner and in light of all the oral evidence of the workman, so also, the statement of claim of the workman. The workman in his deposition before the labour court, has stated that the service of the workman has been terminated. However, the witness of the petitioner stated that the petitioner has not terminated the service of the workman. On the other hand, the workman denied that he left the job. Against that, the petitioner emphasized that he left the job. In such situation, the question is how to determine that whether the workman has left the job or it was case of termination by the employer - petitioner herein. This aspect has been examined by the Apex Court in a decision reported in 1979 Lab & Service 290. In the said decision of the Apex Court, the Apex Court has considered how to determine factual aspect whether the workman has left the job or it is the case of the termination by the employer. The Apex Court has considered that this issue is required to be decided on the basis of the circumstantial evidence which was led before the concerned authority and thereafter, it required to be examined whether the workman has left the job or it was case of termination. The Apex Court has also observed that the very important is conduct of the party which is relevant to determine the issue. The labour court has examined the conduct of both the parties. If it is case of the petitioner that the workman has left the job and they have not terminated services of the workman on 10th August, 1993, it requires to be noted that after four - five months the workman has raised the dispute on 28th January, 1994 before the conciliation officer, where also the petitioner had remained present. One question was asked by this Court to learned advocate Mr.Rathod that during the conciliation proceedings, whether the petitioner had given any offer of returning on job if at all the petitioner had not terminated the services of the respondent workman, and whether the petitioner had given application to the conciliation officer stating that if

the workman is prepared to report for duty then the petitioner will permit him to resume duties. However, learned advocate Mr.Rathod has replied that he is not aware as to what happened to the conciliation proceedings and what happened therein in the proceedings. Even in written statement also, no averments has been made by the petitioner that some offer was made by the petitioner in favour of the workmen before the conciliation officer. This shows the clear conduct which has been examined by the labour court that if the case of the petitioner is that there was no termination and the workman had left the job at his own, then, the immediate and natural reaction of the employer would have been before the conciliation officer, the employer would have certainly stated that they had no objection if the respondent workman resumes his duties. However, there was no such averments made by the petitioner nor it transpires from any documentary evidence produced on record by the petitioner. It may also be note that even before the labour court the reference remained pending for about six years, when it was case of the petitioner that the workman had left the job at his own and it was not case of the termination on the part of the petitioner, then also, the petitioner had not come forward with the stand that they are prepared to allow the workman to resume the duties if the workman is ready to do so. No such averments made by the petitioner before the labour court and as such, no submission seems to have come forward from the side of the petitioner. This shows the conduct of the petitioner that in fact, the services of the workman came to be terminated by the petitioner, otherwise, natural reaction must have resulted into an offer which might have been given to the workman from the petitioner side. This aspect is very clear from the award and that aspect has been rightly examined by the labour court in para-17 internal page-6 in the middle portion, where the labour court has come to the conclusion that if there is defence of the petitioner that the workman had left the job at his own and if the workman had left the job his own, then it is duty of the petitioner to serve a notice seeking explanation as to why the respondent workman is absent on duty. But in the case, it has not come on record that any such notice was ever served by the petitioner on the respondent workman. In that case, it can be safely presumed that the service of the respondent came to be terminated by the petitioner and in that case, there was no need for the petitioner to issue such notice on the respondent workman. This aspect has been examined by the labour court and came to be conclusion that that the workman has not left the job at his own but it was case of termination. The labour court

has given detailed reasons in support of its conclusion. Therefore, the contention raised the leanred advocate Mr.Rthod that there is no reason given by the labour court while coming to the conclusion that it is case of termination of service by the petitioner and the petitioner has failed to establish the same before the labour court, cannot be accepted and in my opinion, the reasons may not run in number of pages rather number lines, but reasoning can be recorded even in a few lines to support the conclusion arrived at by the court of law. Considering the reasons so recorded and appreciation of facts and circumstances and the case law relied before the labour court seem to have properly dealt with by the labour court concerned. It may also be appreciated that the labour court has rightly appreciated the decision of the Apex Court reported in 1979 Lab. & Service 290 in the facts and circumstances of the case on hands.

#. It is also necessary to note one more aspect that the report has been obtained from the Supervisor to the effect that the workman remained in service or whether he has left the job at his own. This aspect is discussed at page.21 where the report of the Supervisor but that Supervisory was not examined before the labour court by the petitioner. It is also not the case of the petitioner that very Supervisory was examined by the petitioner. It is also settled law on this point that if the workman has left the job, in that case also, notice is required to be issued by the employer calling upon the workman whether he is willing to continue on the job or not. Not only that even in case of abandonment of the service, some inquiry is necessary as held by the Apex Court and the other various High Courts in the decisions more than one in number. In the facts of the present case, it has not come on record that despite of their defence of abandonment of duties, there is no notice, nor any inquiry of any kind and therefore, according to my opinion, the labour court has rightly come to the conclusion that the petitioner has failed to establish the defence that the service was not terminated by the petitioner. In fact, services of the workman came to be terminated by the petitioner. However, this being finding of fact based upon appreciation of evidence, this Court cannot reappreciate the same evidence while exercising the powers under Article 226 and 227 of the Constitution of India. Even otherwise, when two views are possible, then also, this Court cannot interfere with the finding of fact of the lower Court. Therefore, according to my opinion, when there is no dispute about violation of Section 25-F despite of the fact that the workman concerned has completed 240 days continuous

service, in such circumstances, the order of termination becomes ab initio void and obviously, the workman is entitled to all consequent reliefs with all usual benefits as held by the Apex Court in case of Tins Works Pvt Ltd reported in AIR 1979 SC 75. The effect of violation of mandatory provisions being the condition precedent of Section 25-F of the Act, which renders the termination ab initio void as held by the Apex Court in case of Bharat Electrical reported in AIR 1981 SC 1253 and the real effect as has been considered by the Apex Court, there is no need to have declaration, in such circumstances, the workman is deemed to be in service for all consequential benefits with the petitioner. However, in the instant case, the labour court has not granted full backwages but only granted 25 % backwages of the interim period. In above view of the matter, according to my opinion, this being the reasonable and proper award passed by the labour court and while passing such award, when no error has been committed he labour court and as such no procedural irregularity committed by the labour court. Even learned advocate Mr.Mehul Rathod also fails to point out any infirmity in the award impugned in this petition and therefore, in such circumstances, when this Court having limited jurisdiction under Article 226 and 227 of the Constitution as recently held by the Apex Court in case of ESSEN DEINKI V. RAJIV KUMAR, reported in 2003 SC Labour & Service page 13. Relevant paragraphs are as under:

> 2. Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.
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> 3. The observations above, however, find affirmance in the decision of this Court in Nibaran Chandra Bag V. Mahendra Nath Ghughu. In Nibaran this Court has been rather categorical in

recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in Mani Nariman Daruwala Vs. Phiroz N.Bhatena this Court in a similar vein stated: (SCC pp. 149-50, para 18)

"In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who (sic) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact."

4. Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the interior tribunal so as to warrant intervention - it ought not to act as a court of appeal and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior tribunal, it would however be a plain exercise of jurisdiction under the article to correct the same as otherwise the law courts would fail to subserve the needs of the society since illegality cannot even be countenanced under any circumstances.

5. In this context reference may also be made to a still later decision of this Court in the case of Savita Chemicals (P) Ltd. Vs. Dyes & chemical Workers' Union wherein this Court in para 19 of the Report observed: (SCC p. 166)

"Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law."

#. Lastly, at the verge of completion of dictation of this judgment, learned advocate Mr.Rathod takes contention that the respondent workman was appointed or engaged in project work and the life of such project work is not more than 15 - 20 years. But at this occasion, this Court has put important querry to the learned advocate Mr.Rathod that whether the petitioner has ever intimated in the appointment order or even by separate writing that the workman has been appointed on project work for specific period. But learned advocate Mr.Rathod is not able to answer this question, nor could produce any written evidence or appointment order issued by the petitioner in favour of the respondent workman. This aspect has been recently examined by the Apex Court in case of NIRAJKUMAR reported in 2003 [3] SCALE 533 where the Apex Court has considered that unless and until it is informed to the workman by the employer that he is engaged in a particular project, such appointment cannot be considered to be project employment. Therefore, considering the facts and circumstances of the case on hands, when there is nothing in writing on the record of this case, it cannot be believed at this stage that the workman was ever appointed on project work but it has to be construed that the workman respondent herein was engaged in usual work available with the petitioner.

#. In view of above observations and considering the reasonings given by the labour court which clearly justify the conclusion arrived at by the labour court and as such, when no error seems to have committed by the labour court, in my opinion, no interference is necessary while exercising the powers under Article 226 and 227 of the Constitution of India and hence, there is no substance in this petition and this petition requires dismissal at the threshold.

#. In view of above discussions, there is no subtance in the present petition and the same fails and hence, the same is rejected at the threshold.

No order as to costs.

Date : 25-4-2003 [H.K.Rathod, J.]

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